IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2374 OF 2004

IN

SUIT NO.2444 OF 2004

1.Mrs.Jaywanti K.Dedhia & Another. ... Plaintiffs.

vs.

1.Ashok Kalyanji Dedhia & others. ... Defendants.

Mrs.A.S.Malvankar, for Plaintiffs.

Mr.Prakash Hegde for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 17th June,2005

P.C.:-

1. It appears to be an admitted fact that the flat which is the subject matter of this suit was owned jointly by the deceased husband of the plaintiff no.1, and the defendant no.1 who is brother of the deceased husband of plaintiff no.1. The defendant no.1 claims ownership of the entire flat on the basis of Release deed which

according to the defendant no.1 was executed in his favour by the deceased. But the admitted position is that the release deed is not a registered document. According to defendant no.1 though the release deed is not a registered document, he has paid amount of Rs.3,51,000/- to the deceased as a consideration for the release deed. In the suit, the plaintiffs are challenging the validity of the release deed. It also appears to be an admitted position that presently the flat is in possession of defendant no.3 as lessee. As the Release deed is not a registered document, it cannot be said that by that Release Deed the share of the deceased in the flat was transferred to defendant no.1 and therefore, in these circumstances, in my opinion, following order will have to be made to protect the interest of both the sides:-

(i) The defendant no.1 shall within a period of Four weeks from today, alongwith the copy of lease deed that defendant no.1 had entered into with defendant no.3, produce accounts in relation to the suit flat, and defendant no.1 shall also file undertaking in this Court undertaking to deposit such amount out of the amount received by defendant no.1 from defendant no.3, as may be directed by the Court and on such terms and conditions as may be directed by the Court.

(ii) In case the flat is vacated by defendant no.3 and any other person is introduced as lessee by defendant no.1, the defendant no.1

shall file an affidavit disclosing full information about the transaction alongwith the copy of the relevant document. The requirement of furnishing account will continue to operate even after induction of any other person.

(iii) The defendant no.1 is restrained by temporary order of injunction from alienating or transferring the suit flat without seeking leave of the Court.

Notice of Motion disposed of.